

Original

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No. 35838-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOHN BICHLER and MARIANNE SOUTHWORTH,

Appellants,

vs.

RYDERWOOD IMPROVEMENT
AND SERVICES ASSOCIATION, INC.

Respondent.

BRIEF OF RESPONDENT

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A. ASSIGNMENT OF ERROR

Issues Raised on Appeal by Bichler

1. Whether the trial court correctly ruled that the 1993 Goro/RISA agreement was the basis for finding an equitable servitude on Tract 13 (Restatement of Appellant's Issue 1)?
2. Whether the trial court erred when it ruled that the Respondent RISA has a right to enforce the 1989 CC&Rs and 1993 ByLaw Agreement which burden Tract 13 but not any property owned by RISA (Restatement of Appellant Issue 2)?
3. Did the trial court err when it ruled a genuine issue of material fact existed whether RISA had associational standing to enforce the 1989/1993 restrictions on Tract 13 and refused to grant RISA's motion for summary judgment on the basis of associational standing (Restatement of Appellant Issues 3 and 4)?
4. Whether RISA and its members are intended Third Party Beneficiaries of the Perimeter Plat CC&R's and therefore have the right to enforce them (Restatement of Appellant Issue 5)?

5. Whether RISA is entitled to attorneys fee if it prevails in this appeal (Not raised by Appellant)?

B. STATEMENT OF THE CASE

1. In the 1950's, the Plat of Ryderwood No. 1 was recorded as a senior community (lot owners must be 55 years or older). [See Appendix 1 (CP35, Exhibit G); CP 35, Exhibit A, page 1, lines 16-19]
2. On June 26, 1953, Respondent RYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION, INC., ("RISA") was incorporated. Initially, the primary purpose of RISA was to provide services to the residents of Ryderwood, but it was also authorized "to perform such other services for its members as may be determined from time to time by the Board of Trustees." Over the years, RISA has grown into something more than a Homeowners Association, but something less than a municipal corporation. RISA currently consists of 271 retiree families living in Ryderwood Plat No. 1, plus additional families owning tracts in the perimeter property. (CP 44, pages 1-2).
3. In the late 1980's, Wildwood International Corporation bought a number of lots within Ryderwood Plat No. 1, plus the 21 perimeter properties. Based on its proposal to the RISA members, Wildwood intended

to expand the area covered by RISA, promising that “all lands sold will maintain the 55 year old occupancy restriction together with most other existing protective covenants so vital to Ryderwood.” (CP44, page 3)

4. In accordance with its stated intentions, on February 7, 1989, Wildwood made the 21 perimeter lots (including Tract 13, the property now owned by BICHLER) subject to a Declaration of Covenants, Conditions and Restrictions (“CC&Rs”), which were recorded on February 27, 1989, with the Cowlitz County Auditor. BICHLER has never contested that these CC&Rs are applicable to the property which is the subject of this appeal. While these restrictions help maintain the character of the area, the owners were not automatically members of RISA. [See Appendix 1, Appendix 2 (CP35, Exhibit C), CP 44, page 3.]

5. The 1989 restrictions, which BICHLER admits are applicable to his property, include the following covenants that run with the land:

PREAMBLE

...

The purpose of these restrictions is to insure the use of the property for attractive residential sites only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, to maintain the desired tone of the area, and thereby to secure to each site owner the full benefit and enjoyment of the site . . .

///

SECTION 4. TEMPORARY STRUCTURES:

No structure of a temporary character . . . shall be used at any time as a residence either temporary or permanently . . . Permanent mobile homes may be used if they are in good condition, well-maintained, at least double wide with gabled or hip roofs with conventional roofing, wood type siding and placed on permanent foundations so as to give appearance of permanent residence.

. . .

SECTION 6.

Residence must have a minimum area of at least 700 square feet.

SECTION 7.

No billboards or large signs may be erected or displayed. . . .

SECTION 11. RECOURSE:

These covenants are to run with the land. If the parties hereto, or any of them, their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situated in this development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either prevent him or them so doing or to recover damages or other dues for such violations.

. . .

SECTION 13. ATTORNEYS' [sic] FEES:

Should the Declarant or any successor initiate legal action against the Declarant or any other party to this agreement for any reason arising out of this transaction or as a result of it, the prevailing party shall be entitled to a reasonable attorney's fee.

[Appendix 2, (CP35, Exhibit C)]

6. To better integrate the perimeter properties, RISA offered membership to all owners of these properties, with the benefit being the added protection of joining RISA and having the RISA ByLaws also apply to these properties. The restrictions in current (December 8, 1992) RISA ByLaws are relevant to this appeal, because in 1993 Gabriel Goro (then the owner of Tract 13 and the vendor of the property to BICHLER) accepted RISA's offer to join. RISA's ByLaws were recorded with the Cowlitz County Auditor on October 21, 1993 and were made applicable to Tract 13 by an agreement between the then owner of the property (Gabriel Goro) and RISA (Carl Latsch signing on behalf of RISA). These ByLaws/restrictions provide:

ARTICLE X MAINTAINING RESIDENTIAL COMMUNITY STATUS

Section 4. Dwellings

. . . No building or structure, including . . . trailers . . . or other such structures, anywhere on the property, other than a complete dwelling shall ever be lived in or used for dwelling purposes.

Section 5. Billboards

Not any sign or billboard shall be erected, placed or maintained on any lot . . .

[Appendix 3 (CP35, Exhibit D); CP35, Exhibit G, page 5, paragraphs 15 and 16; CP 48, pages 3-4.]

7. The 1993 agreement bound BICHLER's property to the RISA ByLaws and made the 1992 ByLaws a permanent encumbrance on the land.

The agreement/restriction specifically provided that:

THE OWNERS OF THE FOLLOWING PROPERTY
DESIRE TO BELONG TO THE RETIREMENT
COMMUNITY OF "RYDERWOOD" WITH ALL OF THE
PROTECTION AND AMENITIES PROVIDED BY THE
BY-LAWS OF RYDERWOOD IMPROVEMENT AND
SERVICE ASSOCIATION

...

Exception: The bylaws of Ryderwood Improvement and
Service Association (R.I.S.A.)

Recorded August 14, 1975– Revised December 8, 1992

...

This exception will be a permanent part and encumbrance on
said deed and can be removed only by the consent of both the
owners of record and the Ryderwood Improvement and
Service Association Board of Trustees.

The agreement was signed for Tract 13 by its owners, Gabriel Goro and his wife, and for RISA by its representative Carl Latsch. The document lacks a legal description of the property, which RISA conceded precluded it from being a real covenant, but does not preclude it for being a basis for an equitable restriction on the land. As the RISA 1992 ByLaws and the 1989 CC&Rs closely mirror each other, this agreement established a second legal grounds for enforcing the RISA residential restrictions against the land. One major difference between the two sets of restrictions, for the point of this

appeal, is that the 1989 restrictions provided for attorneys fees for the prevailing party in the event of a dispute, but the bylaws do not. This agreement was recorded with the Cowlitz County Auditor on November 1, 1993. [See Appendix 4 (CP35, Exhibit F), CP 66.]

8. On May 24, 2001, Goro entered into a real estate contract with BICHLER. Paragraph 7 of the contract noted that the property was subject to “covenants, conditions, restrictions, reservations, easements and agreements of record”, but did not specifically list the 1989 (CC&Rs) and 1993 (ByLaws) restrictions of record. However, BICHLER’s Title Insurance contract in connection with the real estate contract specifically gave him notice of the 1989 restrictions, the 1993 restrictions (making the ByLaws applicable to the property) and 1992 RISA ByLaws. Notice is a key issue in determining whether an equitable restriction applies to the land. BICHLER recorded a Statutory Warranty Deed for Tract 13, on April 21, 2006 (well after this litigation commenced in July of 2005). [See Appendix 5, (CP18, Exhibit C); CP35, Exhibit G, page 5, paragraphs 15 and 16; CP40, Exhibit C.]

9. Shortly after acquiring the land, it is undisputed that BICHLER commenced to violate the 1989 CC&Rs and the 1993 ByLaw CC&Rs by

establishing a hunting camp, consisting of up to 14 RV's located on the property and occupied by various friends and family members of BICHLER, plus a billboard. The camp violated both sets of CC&Rs by the following particulars:

- the use of the property for more than single family use;
- the use of temporary shelters on the property as dwellings;
- the use of RV's as dwellings with less than 700 square feet;
- the erection of a billboard or sign, advertising "Little Rydewood Nudist and Shooting Campground".

(CP15, Page 5 of Complaint of Intervener; CP35, Exhibit A, page 1, lines 12-15; CP 35, Exhibit B, attached photos.)

10. The majority of the RISA membership opposed BICHLER's use of the property and supported RISA taking legal action against Bichler to enforce the restrictions on the land. (CP47, Exhibit E)

11. During all times relevant hereto, Ronald Morris was the owner of Tract 20 (also in the perimeter properties with BICHLER's Tract 13) and therefore a direct beneficiary of the 1989 restrictions. He also is a member of RISA and, on August 8, 2006, "authorized RISA to take whatever actions are necessary to protect my rights" under the 1989 restrictions with regard to the violations of the CC&Rs by BICHLER as a result of maintaining an RV park on Tract 13. Like other members of RISA, he looked to RISA to

maintain the residential character of the community. (CP42; CP 49, Exhibit D)

12. RISA moved for summary judgment, which was granted by Judge Stephen M. Warning of the Cowlitz County Superior Court. On October 30, 2006, Judge Warning made the following findings of fact:

- the 1989 restrictions apply to Tract 13;
- beginning no later than the summer of 2002 BICHLER's use of Tract 13 violated the restrictions;
- as an owner of property in the perimeter, Ronald Morris had a cause of action against BICHLER for enforcement of the restrictions;
- Morris assigned his cause of action for the violations to RISA for purposes of enforcement;
- a permanent injunction against these violations were warranted; and
- RISA was entitled to attorneys fees pursuant to the 1989 restrictions

The Court further determined, at that time, that a genuine issue of material fact still existed regarding whether the ByLaws applied to Tract 13. However, as the Court's ruling on RISA's right to bring the action pursuant to the Morris assignment gave RISA all relief requested, RISA moved for entry of judgment. A judgement for a permanent injunction and for attorneys fees was entered on November 3, 2006. (CP 70, CP 72).

13. BICHLER moved the Court for reconsideration, as the issue of the applicability of the ByLaws remained unresolved. The Court granted the

Motion For Reconsideration and took additional evidence with regard to the applicability of the ByLaws to Tract 13. The Court then found that the 1993 Bylaws/Goro agreement constituted an equitable servitude on Tract 13, which provided an alternate grounds for its judgment in favor of RISA in addition to the Morris assignment of the CC&R claim. An Amended Judgment was therefore entered. (CP 107, CP 109).

C. ARGUMENT

1. Whether the trial court correctly ruled that the 1993 Goro/RISA agreement was the basis for finding an equitable servitude on Tract 13 (Restatement of Appellant's Issue 1)?

The Trial Court did not find that the 1993 Goro/RISA agreement (Appellant's "Goro Statement of Desire") constituted a real covenant with regard to Tract 13. In its December 15, 2006, Second Amended Findings of Fact and Conclusions of Law, the court specifically found:

the ByLaws Agreement did not constitute a covenant real in that it failed to conform to the deed requirements for a conveyance of an interest in real estate.

(CP 108, page 9, lines 6-8). Accordingly, all of Appellant's argument under Argument 1 is irrelevant to the decision. Appellant apparently fails to challenge the trial court actual ruling which was that as a matter of law,

. . . the ByLaws Agreement constitutes an equitable servitude on the land in (1) that it was a promise in writing which was enforceable on the original parties, (2) that it touched and concerned the land, (3) which was sought to be enforced by an original party against a successor in possession, and (4) that BICHLER . . . had notice of the covenant.

(CP 108, page 9, lines 8-12). If the Appeals Court finds a challenge in Appellant's Brief as to this holding of the Court with regard to equitable servitudes, the Respondent responds as follows.

In addition to real covenants, restrictions may be imposed on land use through the doctrine of "equitable servitude." The elements of an equitable servitude are: (1) promise, in writing, which is enforceable between the original parties; (2) which touches and concerns the land or which the parties intend to bind successors; (3) which is sought to be enforced by an original party or a successor, against an original party or successor in possession; and (4) the original party or successor in possession had notice of the covenant. *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 254, 84 P.3d 295 (Div. 2, 2004); *Dickson v. Kates*, 132 Wn. App. 724, 732, 133 P.3d 498 (Div. 2, 2006).

A. Goro/RISA 1993 ByLaw Agreement Was Promise, in Writing, Which Was Enforceable Between Goro and RISA. Clearly the ByLaw Agreement is a promise by Goro to bind him to the RISA ByLaws,

and a return promise by RISA to extend the protection and amenities provided by the ByLaws to the land. The agreement was signed by Goro and his wife, and by a representative of RISA, authorized to enter into the agreement. While the agreement lacks a legal description and thus is not in compliance with the deed requirements of the Statute of Frauds; Washington does not require an equitable servitude to comply with the Statute of Frauds. *Johnson v. Mt. Baker Park Presbyterian Church*, 113 Wash 458, 194 P. 536 (1920); 17 Wash. Prac., Real Estate § 3.11 (2d ed.). The law relaxes the form requirements of a real covenant, but then requires notice of the restrictions.

B. ByLaw Agreement Touches and Concerns Tract 13 and Goro/RISA Intended to Bind Successors. As stated in *Rodruck v. Sand Point Maintenance Commission*, 48 Wash.2d 565, 575, 295 P.2d 714 (1956),

The main consideration in deciding whether covenants run with the land appears to be whether the covenant in question is so related to the land as to enhance its value and confer a benefit upon it.

Clearly that was the view of both Goro and RISA in the ByLaws Agreement.

The opening wording of the agreement specifically provides:

THE OWNERS OF THE FOLLOWING PROPERTY
DESIRE TO BELONG TO THE RETIREMENT
COMMUNITY OF "RYDERWOOD" WITH ALL OF THE

PROTECTION AND AMENITIES PROVIDED BY THE
BY-LAWS OF RYDERWOOD IMPROVEMENT AND
SERVICE ASSOCIATION.

Furthermore, the parties clearly intended that it run with the land and bind successors, as the agreement provides:

This exception will be a permanent part and encumbrance on said deed and can be removed only by the consent of both the owners of record, and the Ryderwood Improvement and Service Association Board of Trustees.

Clearly, the Court's finding regarding touch, concern and intent to bind successors was not erroneous.

C. Enforcement By Original Party Against Original Party/Successor. RISA is an original party to the 1993 agreement and is enforcing the agreement in this litigation. BICHLER is the successor now in possession of Tract 13, acquired directly from Goro.

D. Notice of Covenant. Appellant BICHLER clearly had notice of the equitable servitude prior to acquiring the land. First, the agreement was duly recorded with the County. As stated in *Dickson v. Kates*, 132 Wn. App. 724, 737, 133 P.3d 498 (Div. 2, 2006):

our recording statutes are intended to provide constructive notice to land possessors who have restrictions burdening their land. See RCW 65.08.070 (race-notice recording act). If a restriction is recorded, any subsequent purchaser is assumed to have constructive notice. *Pioneer Sand & Gravel Co. v.*

Seattle Constr. & Dry Dock Co., 102 Wash. 608, 619, 173 P. 508 (1918); *Murphy v. City of Seattle*, 32 Wn. App. 386, 392, 647 P.2d 540 (1982) (dictum).

Second, BICHLER's real estate contract with GORO specifically makes it subject to "any covenants, conditions, restrictions . . . and agreements of record." Third, his commitment to title insurance, dated May 14, 2001, specifically lists the recorded agreement as being an encumbrance on the property (BICHLER did not sign the real estate contract with GORO until June 5, 2001).

The finding that the GORO/RISA ByLaws Agreement formed a valid basis for an equitable servitude binding BICHLER's property, Tract 13, to the RISA Bylaws was clearly supported by the evidence. Appellant's arguments about real covenants are irrelevant to this appeal.

2. Whether the trial court erred when it ruled that the Respondent RISA has a right to enforce the 1989 CC&Rs and 1993 ByLaw Agreement which burden Tract 13 but not any property owned by RISA (Restatement of Appellant Issue 2)?

If this Court affirms the Trial Courts finding that the 1993 ByLaw Agreement formed the basis for an equitable servitude on the land, clearly

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RISA had standing to enforce the agreement as it was an original party to the agreement.

In addition, early in the litigation, BICHLER stipulated that “RISA has an interest in this action.” (CP 14, page 2) Having stipulated to RISA’s interest at the time of its intervention, BICHLER cannot later challenge RISA’s standing. *Keiper v. Amico*, 174 Misc. 211, 212, 20 N.Y.S.2d 480 N.Y. Sup. 1940

In its Motion for Summary Judgment below, RISA argued that there were four bases for RISA’s standing to bring this action against BICHLER:

the initial question is does RISA have standing to sue BICHLER . . . on the basis of the standing of its members? Under Washington law, it would seem that RISA does: on the basis of (1) assignment from Ronald Morris pursuant to RCW 4.08.080, (2) associational standing through its six members that own property in the Perimeter Plat, (3) associational standing through its 271 members that own property in Ryderwood Plat No. 1 and are third party beneficiaries of the February 1989 CC&Rs, and (4) individual standing as an owner of property in both Ryderwood Plat No. 1 and the Perimeter Plat (i.e. the lake and the lake park) and a third party beneficiary to the said CC&Rs.

(CP 43, page 3). The Trial Court ruled as follows:

4. As of August 8, 2006, Morris made a valid assignment of his cause of action to RISA, thereby giving RISA standing to bring this action. RCW 4.80.080.

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5. Genuine issues of material fact still exist as to whether RISA has associational standing pursuant to *Save a Valuable Environment v. City of Bothell*, 89 Wn. 2d 862, 576 P.2d 401 (1978).

(CP 1078, page 11). RISA filed a cross-appeal to challenge the Trial Court's denial of associational standing and failure to address the issue of standing as a third party beneficiary. However, BICHLER raises all three standing issues in his appeal brief, and so RISA will make its cross-appeal arguments in response to BICHLER's arguments.

A. Standing Through Morris' Assignment

It does not appear that BICHLER denies Mr. Morris' standing to bring a claim against BICHLER for violation of the 1989 CC&Rs (which BICHLER does not deny). Therefore, the question now before this Court is whether the Morris' assignment of his claim to RISA was valid. On August 8, 2006, Morris gave the following assignment to RISA:

I authorize RISA to take whatever actions are necessary to protect my rights under the Declaration of Covenants, Conditions and Restrictions (hereafter "CC&Rs"), dated February 7, 1989, and recorded under Cowlitz County Auditor Number 890210065, with regard to the violations of the CC&Rs by . . . JOHN H. BICHLER . . . as a result of their maintaining an RV park on Tract 13 of the so-called "Perimeter Plat."

///

(CP 42) In his deposition, Morris confirmed his assignment of his claim against BICHLER and indicated that as a member of a group, he relied on RISA to protect his rights and the residential character of the community. (CP 47, Exhibit G, page 12, lines 18-23; CP 49, Exhibit D, page 15).

(1) Timing/Motive of Assignment Irrelevant. “A valid assignment must contain clear evidence of the intent to transfer rights, must describe the subject matter of the assignment, must be clear and unequivocal, and must be noticed to the obligor.” 6 Am. Jur. 2d Assignments § 113. See also *Demopolis v. Galvin*, 57 Wn. App. 47, 786 P.2d 804 (Div 1 1990) (“A valid assignment must describe the subject matter of the assignment “with such particularity as to render it capable of identification.” 6A C.J.S. Assignments § 46 (1975); accord, 6A C.J.S., supra at § 49. “No greater particularity, however, is required than is actually necessary to do this, with the aid of the attendant and surrounding circumstances.” 6A C.J.S. supra § 46.”) There is nothing in RCW 4.08.080, or any other authority discovered in this research, that makes an assignment invalid on the basis of timing or motive. Morris’ assignment clearly states the subject matter of the assignment and surrenders control of the litigation to RISA.

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(2) Assignment Was in Writing. Morris' assignment to RISA was in writing. (See CP 42).

(3) Morris' Action Was Assignable. The 1989 restrictions themselves provide for such an assignment in order to protect the character of the neighborhood. Section 11 Recourse provides:

If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in this development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either prevent him or them so doing or to recover damages by judgment or other dues for such violations.

(Emphasis added, Appendix 2). The preamble to the CC&Rs specifically cites to the survey recorded January 13, 1989, which is shown in Appendix 1. The phrase "in this development" is not defined in the CC&Rs, but section 11 itself distinguishes between parties, heirs or assigns of the CC&Rs and "person or persons owning any real property in this development." Based on the referenced survey and the history of the perimeter plats, the clear intent was to give RISA residents the right to maintain the character of its property.

And even if there is ambiguity in "any other person", given the assurances made by Wildwood (a party to the agreement) to RISA that the character of the Perimeter Plat would be compatible with Ryderwood Plat

No. 1, and given the stated purpose in the preamble to this agreement that the purpose of these restrictions is to insure the use of the property for attractive residential sites, it would seem clear that enforcement of these covenants by RISA was within the meaning of the agreement. BICHLER has never denied that violated the covenants, his main argument has been to try to prevent RISA from enforcing them. However, as stated by Mr. Morris in his deposition, he did not undertake the enforcement of the provisions, because he relied on his membership in RISA to enforce the residential character of the property.

Furthermore, RCW 4.08.080 makes a “chose in action” assignable. “The test of assignability is: Does the cause of action survive to the personal representative of the assignor? If it does, the cause of action is assignable. *Slauson v. Schwabacher Bros. & Co.*, 1892, 4 Wash. 783, 31 P. 329.” *Cooper v. Runnels*, 48 Wash.2d 108, 110, 291 P.2d 657 (1955). RCW 4.20.046 provides that:

All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section
...

(Emphasis added) Morris' action was for a breach of the 1989 covenant or agreement, and it seeks specific performance of the agreed restrictions in the land use. One having an interest in an action for specific performance could transfer such interest. *Tolar v. South Texas Development Co.*, 153 S.W. 911 (Tex.Civ.App. 1913).

(4) Real Estate Statute of Frauds Irrelevant to Morris Assignment. As stated in *Firth v. Lu* 146 Wash.2d 608, 616, 49 P.3d 117 (2002), "if an agreement is not for the actual conveyance of real property or an interest therein, it does not fall under the real estate statute of frauds even if the end result is an interest in land." Morris did not convey an interest in land to RISA, instead he assigned a chosen action. This assignment complied with RCW 4.08.080 (in that it was in writing), and did not have to comply with the formal deed requirements of RCW 64.04.010.

3. Did the trial court err when it ruled a genuine issue of material fact existed whether RISA had associational standing to enforce the 1989/1993 restrictions on Tract 13 and refused to grant RISA's motion for summary judgment on the basis of associational standing (Restatement of Appellant Issues 3 and 4)?

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A. As a Matter of Law RISA Had Associational Standing Through Its Perimeter Plat Members. Again, the 1989 restrictions themselves create a broad standing to challenge the violations in its Recourse provision that “any other person owning any real property in this development” may enforce the agreement.

Furthermore, in *Save a Valuable Environment (SAVE) v. City of Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978), the Washington Supreme Court addressed the issue of whether a non-profit corporation (like RISA) can bring an action on behalf of its members (such as the RISA members who own tracts in the Perimeter Plat). While the context of *SAVE* was a challenge against a government zoning action, the law and logic of the case seem to support RISA’s enforcement of the CC&Rs (a private land use control) against BICHLER, who admitted to be in violation. RISA’s individual members are retirees on pensions. The Court in *SAVE* reasoned that:

The question of standing presented here is whether it is appropriate for a non-profit corporation, an artificial creature of the law, to represent persons who are threatened with real injury in a legal action. Individuals with a common interest which they seek to further may choose any one of a number of forms through which to act in concert. . . . The group of people comprising SAVE's membership have chosen the form of a non-profit corporation. The corporation, acting in a sense as their agent, hired an attorney to present their grievances to the City Council. Having suffered a threat of specific injury by

the passage of the ordinance, they now seek to be represented through their corporation in a legal action to have the ordinance set aside.

Id. 89 Wn.2d at 866. Looking to federal law, the Washington Supreme Court adopted a two part test of when a corporation has standing to sue on behalf of its members: (1) the interest must be of the type protected by the law which was allegedly violated (in this case the CC&Rs) and (2) there must be injury in fact to either the corporation or one of its members. *Id.* at 866-867.¹ In a footnote, the Court observed that:

Language in *Kemp v. Putnam*, 47 Wn.2d 530, 536, 288 P.2d 837 (1955) may be construed to mean a non-profit corporation does not have standing absent a showing of direct injury to itself. The facts of that case are distinguishable. Nonetheless, we prefer the federal rule, and to the extent *Kemp* contradicts the holding in this case, it is overruled.

(Emphasis added.) *Id.* at 867, footnote 1. The Court therefore held:

We agree that a non-profit corporation or association which shows that one or more of its members are specifically injured by a government action may represent those members in proceedings for judicial review. . . . This rule is based on practical considerations. An individual who is one of many harmed by an action may be unable to afford the costs of challenging the action himself. A class suit may be too

¹ This two part test would eventually expand into a three part test: (1) do the members have standing, (2) are the interests to be protected germane to the corporation, and (3) does the claim asserted or relief requested require the participation of individual members, *Des Moines Marina Ass'n v. City of Des Moines*, 124 Wn. App. 282, 291, 100 P.3d 310 (2004).

cumbersome. An association or non-profit corporation of persons with a common interest can then be the simplest vehicle for undertaking the task, and we see no reason to bar injured persons from this method of seeking a remedy.

(Emphasis added). *Id.* at 867. See also *Washington Educ. Ass'n v. Shelton School Dist. No. 309*, 93 Wn.2d 783, 791 613 P.2d 769 (1980) (WEA could challenge systematic discrimination in the schools due to “associational standing” based on harm to its members); *National Elec. Contractors Ass'n v. Employment Sec. Dept. of State of Wash.*, 109 Wn. App. 213, 34 P.3d 860 (2001) (contractors’ association had standing to challenge wrongful awards of unemployment compensation); and *International Association of Firefighters, Local 1789 v. Spokane Airport*, 146 Wn.2d 207, 45 P.3d 186 (2002) (union had associational standing to bring action for monetary damages against the airport). This type of standing is termed “associational” standing, as opposed to “individual” standing.

Given that RISA’s six members who own property on the Perimeter Plat (including Mr. Morris) would indisputably have standing to sue BICHLER for violation of the residential provisions of the CC&Rs, given that the interests that RISA seeks to protect are germane to its existence (providing services to its members related to the maintenance of the residential character of Ryderwood), and given that neither the claim asserted

nor the relief requested requires the participation of RISA's individual members, *Des Moines Marina Ass'n v. City of Des Moines*, 124 Wn. App. 282, 291, 100 P.3d 310 (2004), it would seem that as a matter of law RISA has associational standing sufficient to bring this action against BICHLER.

The very group dynamic which the *SAVE* Court sought to protect seems to be present here. When asked by BICHLER's attorney why he did not bring the action against BICHLER himself, Mr. Morris explained "I'm part of a group." (CP 47, Exhibit G, page 12, line 21) This reliance on group representation was further brought out in questioning by RISA's attorney:

Q: Mr. Morris, do you care whether Ryderwood maintains its current residential character?

A: Absolutely.

Q: Who do you rely on to help maintain the character of the community?

A: The RISA

Q: Do you believe the residential character of Ryderwood's a benefit of being part of RISA?

A: Absolutely.

(CP 49, Exhibit D, page 15, lines 10-19). When it drafted the 1989 restrictions, Wildwood intended to preserve the character of the neighborhood:

We certainly understand the concerns of all interested home owners to maintain Ryderwood in its present unique condition. It is also vital to our plans to maintain this same uniqueness and we feel our plans do nothing to alter the town

adversely but on the contrary will improve it now and for future generations. All lands sold will maintain the 55 year old occupancy restriction together with most other existing protective covenants so vital to Ryderwood.

(Emphasis added. CP 44, Exhibit H, paragraph 6). Again, “this development” in the CC&Rs is Ryderwood, not just the perimeter properties.

The 1989 restrictions themselves state their purpose to be:

to insure the use of the property for attractive residential sites only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and to maintain the desired tone of the area.

(Appendix 2, preamble). To enforce these restrictions, the 1989 restrictions provide for “it shall be lawful for any other person or persons owning any real property in this development to prosecute any proceedings at law or in equity against the person or person violating . . . any such covenant. . . .” (Emphasis added.) There is no genuine issue of material fact that (1) the six members (including Mr. Morris) who own lots in the perimeter plat have standing, (2) the residential character of the area is germane to RISA , and (3) the action to enforce the covenants against BICHLER does not require the participation of individual members (i.e. this is not a matter of proving individual damages). The Trial Court erred when it ruled that a genuine issue of material fact exists whether RISA has associational standing.

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4. Whether RISA and its members are intended Third Party Beneficiaries of the Perimeter Plat CC&R's and therefore have the right to enforce them (Restatement of Appellant Issue 5)?

A. RISA Also Has Standing As a Third Party Beneficiary to the 1989 Restrictions.

Another argument for RISA having standing in this case can be made on the basis that the owners of property within Ryderwood Plat No. 1 are third party beneficiaries of the CC&Rs. As shown by the survey recorded January 13, 1989, and by a comparison of the 1989 CC&Rs with the 1992 ByLaws, the clear intent of Wildwood was to expand the residential area of Ryderwood by creating use restrictions on the Perimeters Plats which mirrored the use restrictions within Ryderwood Plat No. 1.

The Perimeter Plat forms a square shaped border around Ryderwood Plat No. 1. (See Exhibit 1) The 21 tracts listed in the CC&Rs form the "C" of the Perimeter Plat, while RISA's lake and lake park form the area between the upper and lower jaws of this "C". Clearly, the restrictive covenants in the February 1989 CC&Rs were "designed to make residential subdivisions more attractive for residential purposes and [thus] are enforceable by injunctive relief." *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 699, 974 P.2d 836 (1999);

Metzner v. Wojdyla, 125 Wn.2d 445, 886 P.2d 154 (1994). A comparison of the restrictions in the CC&R with those in the ByLaws shows that the intent was not just to create a separate residential community adjacent to Ryderwood Plat No. 1, but to actually extend the scheme--verbatim--in Ryderwood Plat No. 1 to the 21 tracts in the Perimeter Plat.

B. Problem If RISA Lacks Standing. Not surprisingly, it is a Defendant who has admittedly violated the CC&Rs that is challenging RISA's standing in the matter. The history of this litigation has shown the expense involved in enforcing clear rules against an admitted violator. An expense well beyond the means of most retirees. If RISA cannot sue, then as a practical matter the Defendants might be able to render the restrictions meaningless. The longer the covenants are not enforced, the more equitable defenses that will arise against future enforcement.

C. Washington Takes A Pragmatic Approach. Applying the law of third party beneficiaries to the subject CC&Rs is a logical and pragmatic solution to the problem. And in recent years, Washington has increasingly adopted a pragmatic approach to CC&Rs. In 1997, our Supreme Court stated that:

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In Washington the intent, or purpose, of the covenants, rather than free use of the land, is the paramount consideration in construing restrictive covenants. . .

The time has come to expressly acknowledge that where construction of restrictive covenants is necessitated by a dispute not involving the maker of the covenants, but rather among homeowners in a subdivision governed by the restrictive covenants, rules of strict construction against the grantor or in favor of the free use of land are inapplicable. The court's goal is to ascertain and give effect to those purposes intended by the covenants. Ambiguity as to the intent of those establishing the covenants may be resolved by considering evidence of the surrounding circumstances. *Mountain Park Homeowners Ass'n, Inc.*, 125 Wn.2d at 344, 883 P.2d 1383; *Burton*, 65 Wn.2d at 622, 399 P.2d 68. The court will place "special emphasis on arriving at an interpretation that protects the homeowners' collective interests." *Lakes at Mercer Island Homeowners Assoc.*, 61 Wn. App. at 181, 810 P.2d 27.

(Emphasis added.) *Riss v. Angel*, 131 Wn.2d 612, 623-624, 934 P.2d 669 (1997). Clearly, as stated in the Wildwood proposal to the members, Ryderwood Plat No. 1 owners were intended to be third party beneficiaries of the covenants placed by Wildwood on the perimeter properties. The Washington Supreme Court has been sympathetic to the protection of such residential areas:

Restrictive covenants are enforceable promises relating to the use of land. See generally *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 690-91, 974 P.2d 836 (1999); 17 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Property Law § 3.1, at 123 (2d Ed. 2004). A covenant that governs a general building scheme designed to make the

property attractive for residential purposes is enforceable unless it clearly violates an overriding public policy. See *Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 815, 854 P.2d 1072 (1993).

Viking Properties, Inc. v. Holm, 155 Wn.2d 112, 119, 118 P.3d 322 (2005).

D. Determining Third Party Beneficiaries. Determining

whether someone is a third party beneficiary is an objective test, not a subjective one:

“A third-party beneficiary contract exists when the contracting parties intend to create one. The test of intent is an objective one: whether performance under the contract would necessarily and directly benefit the third party.” *Donald B. Murphy Contractors, Inc. v. King County*, 112 Wn. App. 192, 196, 49 P.3d 912 (2002).

Shaffer v. McFadden, 125 Wn. App. 364, 368, 104 P.3d 742 (2005).

Applying an objective test, the CC&Rs are a contract, running with the land, between Wildwood and the purchasers of the Perimeter Plat tracts, with adjacent owners of Ryderwood Plat No. 1 as third party beneficiaries. As such, RISA has standing to sue Defendants BICHLER and SOUTHWORTH for violation of the covenants, both on the basis of associational standing through its members in Ryderwood Plat No. 1 and through RISA's individual ownership of land within Ryderwood Plat No. 1.

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A growing number of states have applied the concept of third party beneficiaries in a covenant setting. *Vogeler v. Alwyn Improvement Corporation*, 247 N.Y. 131, 159 N.E. 886 (1928); *Rodgers v. Reimann*, 227 Or. 62, 67-68, 361 P.2d 101 (1961); *Muldawer v. Stribling*, 243 Ga. 673, 256 S.E. 2d 357 (1979); *Allemong v. Frendzel*, 178 W.Va. 601, 604-605, 363 S.E.2d 487 (1987); *The Nature Conservancy v. Congel*, 253 A.D. 2d 248 (1999).

This emphasis on the practical application of covenants is the same logic behind permitting a homeowners' association to sue on behalf of its members, even if the association itself is "a stranger to the title." See *Neoponsit Property Owner's Assn, Inc., v. Emigrant Industrial Savings Bank*, 278 N.Y. 248, 15 N.E. 2d 793 (1938), quoted approvingly by the Washington Supreme Court in *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 295 P.2d 714 (1956). See also *Lake Limerick Country Club v. Hunt Mfg Homes, Inc.*, 120 Wn. App. 246, 84 P.3d 295 (2004).

If RISA does not have standing to sue, then the entire residential scheme of both Ryderwood Plat No. 1 and the Perimeter Plat is at risk, and this risk grows with the passage of time. It is undisputed that BICHLER had clear notice of the restrictions before he purchased the property, but yet

violated the covenants by maintaining an RV park and a billboard on Tract 13 for roughly five and a half to six and a half years. Prior to the Trial Court's issuance of an injunction, this clear harm to RISA and its members was ongoing, which also created growing future problems if RISA, or somebody, never took action to enforce the covenants. If RISA cannot sue to enforce the covenants, then the individual owners of both Ryderwood Plat No. 1 and the Perimeter Plat must, by necessity, be on their own. Over time, if the covenants are not enforced--regardless of the practical reasons--several equitable defenses to enforcement of the covenants will begin to arise: acquiescence, abandonment, laches, estoppel and changed neighborhood conditions. *Mountain Park Homeowners Ass'n, Inc., v. Tydings*, 125 Wn.2d 337, 883 P.2d 1383 (1994). To permit such a result would clearly thwart the intentions of the subject CC&Rs.

5. Whether RISA is entitled to attorneys fee if it prevails in this appeal (Not raised by Appellant)?

Section 13 of the 1989 restrictions provides that:

Should the Declarant or any successor initiate legal action against the Declarant or any other part[y] to this agreement for any reason arising out of this transaction or as a result of it, the prevailing party shall be entitled to a reasonable attorney's fee

(Appendix 2). On the basis of this provision and on the basis of RISA being the prevailing party below, the trial court awarded RISA reasonable attorneys fees incurred subsequent to Mr. Morris' August assignment to RISA. Appellant has not challenged this finding on appeal. Clearly, Mr. Morris was a successor to Wildwood in the agreement, and thus had the right to seek attorneys fees. As this right was assigned to RISA, RISA is entitled to attorneys fees in the actions in which it prevails. *Clients' Service Inc. v. Pupo*, 71 Wash.2d 610, 616-617, 430 P.2d 552 (1967). Likewise, on either a third party beneficiary or associational standing theory, RISA would be entitled to attorneys fees. Pursuant to RAP 18.1(a), RISA requests attorneys fees in this appeal.

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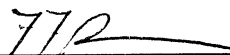
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D. CONCLUSION

Accordingly, RISA requests that this Court affirm the decision of the Superior Court, with the modification of finding RISA also had associational standing and third party standing. RISA also requests attorneys fees as the prevailing party on appeal.

DATED: September 10, 2007.

Respectfully submitted,



FRANK F. RANDOLPH, WSB #32572
Of Attorneys for Respondent

CERTIFICATE

I certify that on this day I caused a copy of the foregoing Brief of Respondent to be mailed, postage prepaid, to Appellants' attorney, addressed, as follows:

Tyler Shillito
Sloan Bobrick Oldfield & Helsdon PS
7610 - 40th Street West
PO Box 64189
University Place, WA 98464-1590

FILED
COURT OF APPEALS
DIVISION III
SEP 12 PM 1:51
COMM

DATED this 10 day of September, 2007, at Longview,
Washington.



HILLARY THELEN

[illegible]

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

6-76733

THIS DECLARATION, made on the date hereinafter set forth by the undersigned party, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property in the County of Cowlitz, State of Washington, which is more particularly described as: Tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of that survey recorded January 13, 1989 under Auditor's File No. 890113917 in Volume 9, Page 85 of surveys of Cowlitz County, Washington.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above shall be paid, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The purpose of these restrictions is to insure the use of the property for attractive residential sites only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the area, and thereby to secure to each site owner the full benefit and enjoyment of his site, with no greater restriction on the free and undisturbed use of his site than is necessary to insure the same advantages to the other site owners.

SECTION 1. COVENANTS FOR MAINTENANCE:

Each owner shall keep all building sites owned by him and all improvements thereon, in good order and repair, including but not limited to the proper maintenance of water sources and sewage disposal sites, the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

SECTION 2. NUISANCES:

No noxious or offensive activity shall be carried on nor shall anything be done which may be or may become any annoyance or nuisance, including activities which result in excessive noise, and specifically including any unsightly junk heaps or refuse dumps, or abandoned autos or machinery.

SECTION 3. UTILITY EASEMENTS:

Grantor hereby reserves a twenty (20) foot easement for installation and maintenance of utilities.

SECTION 4. TEMPORARY STRUCTURES:

No structure of a temporary character, basement, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence either temporarily or permanently. Permanent mobile homes may be used if they are in good condition, well-maintained, at least double wide with gabled or hip roofs with conventional roofing, wood type siding and placed on permanent foundations so as to give appearance of a permanent residence.

RE-RECORDED TO AMEND SECTION 12

82-18-89 VP 2153 REC 02 7.00

7.00

REC 02

82-27-89 DW 2452

EXHIBIT "C"

SECTION 5. WATER POLLUTION - PREVENTION

In the interest of public health and sanitation, and so that the above-described land and all the land in the same locality may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife, and other public uses thereof, the owner will not use the above-described property for any purpose that would result in the pollution or diversion of any waterway or spring that flows through or is adjacent to such property by refuse, sewage, or other materials that might tend to pollute the waters of any stream or streams or spring or otherwise impair the ecological balance of the surrounding lands, except for stock watering. All sewage disposal shall be built and maintained to Cowlitz County Health Department standards.

SECTION 6.

Residences must have a minimum area of at least 700 square feet.

SECTION 7.

No billboards or large signs may be erected or displayed.

SECTION 8.

Owners who build and occupy this tract must not be less than 55 years of age.

SECTION 9.

All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

SECTION 10. ASSIGNMENT:

This agreement may be transferred and assigned to any subsequent owner, their heirs transferees, successors or assigns upon the acquisition of a legal interest in any portion of the above property.

SECTION 11. RECOURSE:

These covenants are to run with the land. If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in this development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either prevent him or them so doing or to recover damages or other dues for such violations. Invalidity of any one of these covenants by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

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SECTION 12. PRIVATE ROADS:

All private roads on this property that are used as ingress and egress to other properties will be left open for the use of the property owners and no obstruction shall be placed on these roads. An owner of property which has a road crossing his land may gate the road. Said gate remaining unlocked for use by other owners. The owner may also build and maintain an animal guard at such a location in lieu of a gate. **The Common Road Easement as per Covenants does ** W.L.

SECTION 13. ATTORNEYS'S FEES:

Should the Declarant or any successor initiate legal action against the Declarant or any other part to this agreement for any reason arising out of this transaction or as a result of it, the prevailing party shall be entitled to a reasonable attorney's fee.

DATED THIS 7th day of February, 1989.

WILDWOOD INTERNATIONAL CORPORATION

Roy M. Leland
ROY M. LELAND

Virginia E. Leland
VIRGINIA E. LELAND

STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this day personally appeared before me Roy M. Leland and Virginia E. Leland to me known to be the individuals described in and who executed the within and foregoing instrument and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.



Given under my hand and official seal this 7th day of February, 1989.

Carmie M. Waller
Notary Public in and for the State of Wash.
Residing in Spokane

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REQUEST OF TICOR TITLE INS. CO.
VOL 1052 P 1285
FEB 10 3 16 PM '89

BY Patricia Lee
CLERK OF COURT

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FILED
REQUEST OF TICOR TITLE INS. CO.
VOL 1053 P 624
FEB 27 3 29 PM '89

BY John Miller
CLERK OF COURT

W.L.

**not apply to the existing road through Tract 6 of that survey recorded January 13, 1989 under Auditor's File No. 890113018 in Volume 9, Page 85 of Surveys of Cowlitz County.

EXHIBIT "C"

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Revised 12/8/92

Covenants

BY LAWS HYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION

ARTICLE 1. MEMBERSHIP.

Section 1. Qualifications

Only an individual purchasing or owning a residence in the town of Hyderwood, County of Cowlitz, State of Washington, shall be eligible for membership in this corporation. As soon as the buyer becomes a legal resident of the area under the jurisdiction of the corporation, the owner of the residence shall be entitled to one membership certificate.

No member can acquire any interest which will entitle him to any greater voice, authority or interest in the corporation than any other member. In the case of a married couple, the husband and wife may be the co-owners of a residence but only one has the right to vote.

The qualifications for ownership or purchase of a home within the boundaries of the area under the jurisdiction of the corporation are:

- Must be a bona-fide recipient of an annuity or a pension.
- Must not be less than fifty five years of age.
- Must have no additional, permanent occupants of the home, (other than the spouse) who do not meet the above requirements. (Exceptions to the last requirement may be made by the Board of Trustees in the event that health or personal care of either party justifies such permission.)

Memberships obtained by falsification of facts may be revoked by the Board.

The Board shall refuse those services for which the corporation was formed to other than bona-fide certificate holders, except as provided elsewhere in the by-laws.

Section 2. Certificate of membership

1. The certificate of membership shall be of such form and device as the Board of Trustees may direct.
2. At the time of issue, the certificate shall be signed by the purchaser and the president and the secretary of the Association.
3. The certificate shall express on its face:
 - a. Date of issue.
 - b. Street number of the residence.
 - c. The plat location of the residence.
 - d. In case of transfer, the name of the party

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selling.

4. The corporate seal shall be impressed.

Section 3 Transfer of Membership

When a transfer of membership or contract has been completed the seller shall surrender his certificate of membership and a new certificate of membership shall be issued to the purchaser as soon as he qualifies for same.

ARTICLE 11 MEETING OF MEMBERS

Section 1 Annual meeting

The annual meeting of the members shall be held at two o'clock in the afternoon on the second Tuesday in December. This meeting is for the purpose of transacting such business as may properly come before the meeting. One weeks notice of the time and place shall be mailed to each member. Special meetings may be called by the Board of Trustees or by a request signed by a majority of members. Five days notice shall be given of such a meeting.

Section 2 Quorum

A quorum for the transaction of business shall consist of at least one third (33 1/3%) of certificate holders. (This was revised on Feb. 2, 1982 from 51% to one third.) Any action approved by a majority of the members present at a meeting where there is a quorum shall be valid except as provided elsewhere in the bylaws.

Section 3 Proxies

At all corporate meetings except for the election of officers, each member, either in person or by proxy shall be entitled to one vote. Such proxy is to be in writing and filed with the Secretary of the Association prior to the meeting. (The following addition was made to the bylaws on Feb. 2, 1982:) The Association will accept only proxies in their general meetings that are designated for voting on specific subjects, or in specific meetings by a specific person, and will count in determining a quorum.

Section 4 Voting at general meetings

In any general meeting of the certificate holders the voting on issues before the group shall be by secret ballot. If any member in good standing in K.I.S.A. moves from the floor, that there be a secret ballot.

Section 5 Rules of Order

Robert's Rules of Order shall guide in all business meetings of the members except as otherwise provided in the Bylaws.

amended 2/2/82 & 12/8/82

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Section 6 Officers of the Association

The officers of this Corporation shall be President, Vice-president, a Secretary and a Treasurer. There may be more than one Vice-president. These officers shall be the same as those chosen by the Trustees to be officers of the Board of Trustees.

ARTICLE III CORPORATE POWERS

The corporate powers of this corporation shall be vested in a Board of five (5) Trustees. Three (3) Trustees shall constitute a quorum for the transaction of routine business. The Trustees must be certificate holders. The number of Trustees may be changed in accordance with the corporate laws of the State of Washington.

ARTICLE IV ELECTION OF TRUSTEES

1. The Trustees shall be chosen by ballot at the annual election. The term of office for a Trustee shall be for two (2) years. Two Trustees shall be chosen at the annual election on even numbered years, and three Trustees shall be chosen at the annual election on odd numbered years. On even numbered years, the two candidates receiving the highest number of votes shall be declared elected and on odd numbered years the three candidates receiving the highest number of votes shall be declared elected.

2. The annual election of Trustees shall be held in the forenoon on the second Tuesday of December. The doors of the polling place will be opened at 8:00 A.M. and closed at 12:00 noon. Those remaining in the polling place after the doors are closed, will continue to vote until all have balloted.

3. Thirty days previous to the annual election, those seeking to have their names placed as candidates for the office of Trustee shall so inform the Secretary in writing. Within the next five days, the Secretary shall prepare an alphabetical list of the candidates and mail a copy of the same to each certificate holder.

4. In case a certificate holder expects to be absent from the city on the day of election or through incapacity is unable to come to the polling place, such member may use an absentee ballot. Upon application to the Secretary, in writing, the applicant will be furnished an absentee ballot through the mail or in person. The ballot must be returned to the Secretary in a sealed envelope marked ABSENTEE BALLOT and be in the hands of the Secretary not later than the day before the election. On election day the Secretary shall deliver to a clerk of election the absentee ballots to be checked and placed in the ballot box. When the election is declared closed and the ballot box opened, the absentee ballots shall be opened and counted as a part of the final tally.

An absentee certificate holder will not be allowed to vote in any

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other way than as provided above.

Space on the ballot, both regular and absentee, will be provided to permit the voter to write in the name or names of persons not listed on the ballot.

5. Three certificate holders, not officers in the Association or candidates for office, shall be named by the trustees to act as the official election board. When the polls are opened, a ballot will be issued by a clerk to a member whose name will be entered in a tally book and also checked against a voter's list. When the voter is ready to cast his ballot it shall be handed to the proper clerk to be checked off and then deposited in the ballot box.

6. A vacancy on the Board of Trustees shall be filled by a special election. The trustees so elected shall complete the term of the vacating trustee. Such election shall be held as soon as possible and not later than thirty (30) days from the date the vacancy occurs. Provided, however, that if the vacancy occurs when there is less than six months before the annual election, then the Board of Trustees may appoint a replacement trustee to hold office until the annual election.

ARTICLE V DUTIES OF THE TRUSTEES

1. To cause to be kept in the minutes a complete record of the acts and proceedings of the meetings of the certificate holders.
2. To keep a complete set of the minutes of the meetings of the trustees.
3. To cause to be kept an acceptable system of accounting showing in detail all funds received and disbursed.
4. To present at the annual meeting of the Association, a full and detailed statement showing the condition of the finances of the Association.
5. To supervise all agents and employees and see that their duties are properly and satisfactorily performed.
6. To see that the reserve fund is built up

ARTICLE VI POWERS OF THE TRUSTEES

1. To call special meetings of the certificate holders.
2. To appoint and remove at pleasure all agents and employees of the Association.
3. To make rules and regulations not inconsistent with the laws of the State of Washington, or the by-laws of the Association.

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4. To conduct, manage and control the affairs and business of the Association.
5. To incur indebtedness.
6. To establish and maintain a reserve fund.
7. To set up special regulations and enforce the same in case of emergency.
8. Suspend the voting rights of and services to any member during any period in which such member shall be in default in the payment of any assessment levied by the Association.

ARTICLE VII ORGANIZATION OF THE BOARD OF TRUSTEES

Within five days after the election of the Board, the Trustees shall meet and organize. At this meeting no notice need be given members. From their numbers the Trustees shall choose a President, a Vice-president, a Secretary and a Treasurer. More than one Vice-president may be chosen. The regular monthly meeting of the Board shall be held at 10:00 A.M. on the second Tuesday of the month. If the Tuesday is a holiday, the meeting shall be held on the day following.

ARTICLE VIII POWERS AND DUTIES OF THE OFFICERS OF THE BOARD

Section 1 Powers and duties of the President of the Board.

He shall preside over the meetings of the trustees and over all of the meetings of the certificate holders.

He shall, as President, sign all contracts and other instruments of writing which have first been approved by the Board of Trustees, except as otherwise provided.

He shall call extra meeting of the Association whenever he deems it necessary.

He shall, subject to the advice of the Trustees, have direction of the affairs of the corporation and generally shall discharge such other duties as may be required by the by-laws of the corporation.

Section 2 Duties of the Vice-President

If, at any time the President shall be unable to act or shall be absent, the Vice-President shall take his place and shall perform the duties, and is hereby given the powers set up for the President.

In the event that both President and Vice-President are absent or unable to act, then the Board may name some other member of the Board to act as President.

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Section 3 Duties of the Secretary

To keep a record of the proceedings of the Board of Trustees and of the proceedings of the meetings of the certificate holders.

To keep a corporate seal and to affix the same to papers requiring a seal.

To keep on file a duplicate of each certificate of membership so long as the holder remains a member of the Association.

To keep an alphabetical list of certificates of membership.

To discharge such duties as pertain to his office or shall be prescribed by the by-laws or requested by the Board of Trustees.

To serve all notices required by law, the by-laws of the Corporation, or as directed by the President.

Section 4 Duties of the Treasurer

To see that all funds collected or received by the Corporation are placed in the bank or banks designated by the Trustees. These funds are to be paid out on order of the Trustees by check signed and countersigned as provided by the Trustees. The Trustees may employ an assistant Treasurer to perform some or all the duties of the Treasurer.

To render a regular monthly statement showing in detail the receipts and disbursements. The Trustees may call for such a report at their pleasure.

ARTICLE IX INDEMNIFICATION OF TRUSTEES

Each trustee and each officer of the Association, in consideration of his services as such for the Association, shall be and is hereby, without the necessity of further contracts in relation to the same, indemnified and held harmless by the Association against, and shall be reimbursed by the Association for all expenses reasonably incurred or paid by him in connection with any action, suit or proceeding, including but not limited to, attorney's fees and/or investigating costs, in which he is made a party by reason of being or having been an officer or trustee of the Association.

ARTICLE X MAINTAINING RESIDENTIAL COMMUNITY STATUS

Section 1 Single family dwellings

Certificate holders shall construct no buildings which could be used for double occupancy or for conducting business.

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Section 2 Small business

The lots permitted to be used for residential purposes shall not be used or cause to be used or permitted or authorized in any way to be used for any business or profession or for any commercial manufacturing, mercantile, storing, vending, civic, educational, religious, medical, hospital, cemetery, crematory, institutional or other non-residential purpose or for the manufacture or sale of any property, real or personal, or any purpose whatsoever other than residential purposes without the prior written approval of the Service Association.

Section 3 Animals

No horses, cows, cattle, goats, sheep, rabbits, hares and/or other livestock, no poultry, pigeons, doves and/or similar fowl, and no bees shall be kept or raised on any part of said tract or on any lot therein; no dog, cat, bird, fish or pet-raising or trading as a business shall be carried on, directly, or indirectly, on said property, without the written consent of the Service Association having first been obtained.

Dogs or cats kept as pets shall not be permitted to trespass on the property of others nor in any manner disturb the peace or comfort of other than their owners.

Section 4 Dwellings

No part of any building shall in any manner be occupied or lived in until made to comply with all standard sanitary and safety conditions. No building or structure, including tents, snacks, trailers, outbuildings, garages or other such structures, anywhere on the property, other than a complete dwelling shall ever be lived in or used for dwelling purposes.

Section 5 Billboards

Not any sign or billboard shall be erected, placed or maintained on any lot: provided, however, nothing in this paragraph shall be construed to prevent the erection, placement or maintenance by the Service Association or its successors or its duly authorized agents, of signs in connection with the conduct of property business and/or the development and sale of any part of said property.

Section 6 Sanitation

No cesspool shall be constructed, maintained or used on any lot.

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Section / Appearance

Each lot or home owner, or contract purchaser thereof, shall keep his property free and clear of weeds and rubbish and do all other things necessary or desirable to keep the premises neat and in good order. It is hereby agreed that if any owner or contract purchaser fails to conform to this covenant, the Service Association or its successors shall have the right to enter upon the property of such owner or contract purchaser and remove all weeds and rubbish and do all other things necessary to put the premises in neat and orderly condition, and the expense thereof shall become due and payable from such owner or purchaser to the Service Association.

ARTICLE XI SEVERABILITY

Invalidation of any one of these restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE XII CHANGING THE BY-LAWS

The by-laws may be repealed or amended or new by-laws may be adopted by a vote of a majority of certificate holders. Not less than thirty (30) days before any such change can be made, each member of the Association shall be notified by mail of the proposed change or changes.

ARTICLE XIII MONTHLY CHARGES

The Association shall establish a monthly, or annual charge, to be paid by each member of the Association for services rendered. These include any service or services the Association may be called upon to perform or render. Annual payments will be due and payable in January of each year. This charge is to cover all costs of operating and maintaining the Association, to provide funds to be drawn upon for all legitimate expenses incurred by the Board of Trustees, and also to provide funds for a reserve to care for depreciation and/or any emergency expenses. This charge may be increased by action of the Association.

All charges shall be payable on or before the tenth of the month. No residence is exempt from this ruling, regardless of transfer of ownership.

ARTICLE XIV LIMIT ON SPENDING

The trustees shall neither purchase any equipment or supplies nor enter into any contract, lease, assignment or any other obligation, except regular or normal operating expenses such as garbage collection, utilities, or insurance expense, that will bind the Association to an aggregate of four thousand (\$4,000) dollars without first calling a meeting of the members and

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obtaining an affirmative vote. An affirmative vote on matters of this nature shall require affirmation by at least fifty-one (51) percent of the total members present and voting.

ARTICLE XV DISSOLUTION OF THE CORPORATION

In the event that it is deemed advisable to dissolve this corporation, the procedure shall be under the laws and regulation of the State of Washington.

No such dissolution shall occur until all outstanding indebtedness is paid.

If there is a surplus fund accumulated, it may be distributed pro rata among the existing members.

No such dissolution shall occur prior to July 1, 2003.

DARLENE P. GORDON
COWLITZ CO. AUDITOR

OCT 21 11 22 AM '93

Harold Barnes
FILED

REQUEST OF

931101065

V1160 P1197

THE OWNERS OF THE FOLLOWING PROPERTY DESIRE TO BELONG TO THE RETIREMENT COMMUNITY OF "RYDERWOOD" WITH ALL OF THE PROTECTION AND AMENITIES PROVIDED BY THE BY-LAWS OF RYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION.

Property description

See attachment "A"
Parcel # WN1002002

See attachment "B"
By-laws *SEE AUDITORS FEE # 931021042 V1159 P1437*
In the county of Cowlitz, Washington State.

Exception: The by-laws of Ryderwood Improvement and Service Association. (R.I.S.A.)
Recorded August 14, 1975 -- Revised December 8, 1992
Auditors number 779663
See Attachment -- By-laws.

This exception will be a permanent part and encumbrance on said deed and can be removed only by the consent of both the owners of record, and the Ryderwood Improvement and Service Association Board of Trustees.

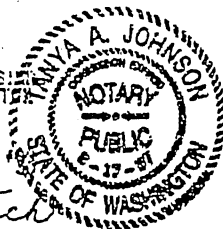
Owners of record: Date *Oct. 22nd 1993*
Signed: *[Signature]* / *Anna Gou*
Mailing address: 1600 NE 140 St
SEATTLE WA 98105

DAKEMI T. DENOS
COWLITZ CO. AUDITOR

Nov 1 10 04 AM '93

Carl Litch
FIELD

REQUEST OF



County of King

Tanya A. Johnson

Notary Public in and for
the State of Washington
residing at:

Seattle Washington
Commission Expires *8/17/97*

EXHIBIT "F"



3117060
Page: 1 of 5
88/85/2001 11:44A
COWLITZ COUNTY TITLE REC 12.00 Cowlitz County

AFTER RECORDING MAIL TO:

Name GABRIEL GORO

Address 12218 1ST AVENUE S.

City, State, Zip SEATTLE, WA 98168

Escrow No. 00126708-JMW

Received \$512⁰⁰ excise tax levied
pursuant to Chap. 11, Laws Ex. 1951
012008 JUDY AINSLIE
AFF. NO. COWLITZ COUNTY TREAS.
Date JUN 0 6 2001 J. B. Deputy

EXHIBIT 'A'

ANY OPTIONAL PROVISION NOT INITIALED BY ALL PERSONS SIGNING THIS CONTRACT -
WHETHER INDIVIDUALLY OR AS AN OFFICER OR AGENT - IS NOT A PART OF THIS
CONTRACT.

REAL ESTATE CONTRACT (Residential Short Form)

1. PARTIES AND DATE. This Contract is entered into on May 23, 2001 between GABRIEL GORO, as his separate estate as "Seller" and JOHN H. BICHLER, an unmarried man and MARIANNE M. SOUTHWORTH, an unmarried woman as "Buyer".

2. SALE AND LEGAL DESCRIPTION. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the following described real estate in COWLITZ County, State of Washington:

TRACT 13 OF THAT SURVEY RECORDED JANUARY 13, 1989 UNDER AUDITOR'S FILE NO. 890113018 IN VOLUME 9, PAGE 85, SURVEYS OF COWLITZ COUNTY, AND BEING A PORTION OF SECTION 10, TOWNSHIP 10 NORTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN.

SITUATE IN THE COUNTY OF COWLITZ, STATE OF WASHINGTON

10-10-3W T-2A, 5B

Assessor's Property Tax Parcel Account Number(s): WN10-02-002

3. PERSONAL PROPERTY. Personal property, if any, included in the sale is as follows:

No part of the purchase price is attributed to personal property.

4. (a) PRICE. Buyer agrees to pay:

\$ 40,000.00	Total Price
\$ (15,000.00) Down Payment
\$ (-0-) Assumed Obligation(s)
\$ 25,000.00	Amount Financed by Seller.

(b) ASSUMED OBLIGATIONS. Buyer agrees to pay the above assumed Obligation(s) by assuming and agreeing to pay that certain _____ dated _____ recorded as AF# _____.
Seller warrants the unpaid balance of said obligation is \$ _____ which is payable \$ _____ on or before the _____ day of _____, _____ interest at the rate of _____% per annum on the declining balance thereof; and a like amount on or before the _____ day of each and every _____ thereafter until paid in full.

NOTE: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN _____.

ANY ADDITIONAL ASSUMED OBLIGATIONS ARE INCLUDED IN ADDENDUM.

5/12

EXHIBIT "A"

(c) PAYMENT OF AMOUNT FINANCED BY SELLER.

Buyer agrees to pay the sum of \$25,000.00 as follows:

\$300.00, or more at buyer's option on or before the 15th day of July, 2001, including interest from June 15, 2001 at the rate of 7.0% per annum on the declining balance thereof; and a like amount or more on or before the 15th day of each and every month thereafter until paid in full.

NOTE: Fill in the date in the following two lines only if there is an early cash out date.

NOTWITHSTANDING THE ABOVE, THE ENTIRE BALANCE OF PRINCIPAL AND INTEREST IS DUE IN FULL NOT LATER THAN April 30, 2007.

Payments are applied first to interest and then to principal. Payments shall be made at Cowlitz County Title Company, 1159 14th Avenue, Longview, Wa. 98632 or such other place as the Seller may hereafter indicate in writing.

5. FAILURE TO MAKE PAYMENTS ON ASSUMED OBLIGATIONS. If Buyer fails to make any payments on assumed obligation(s), Seller may give written notice to Buyer that unless Buyer makes the delinquent payment(s) within fifteen (15) days, seller will make the payment(s), together with any late charge, additional interest, penalties, and costs assessed by the Holder of the assumed obligation(s). The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the assumed obligation. Buyer shall immediately after such payment by Seller reimburse Seller for the amount of such payment plus a late charge equal to five percent (5%) of the amount so paid plus all costs and attorneys' fees incurred by Seller in connection with making such payment.

6. (a) OBLIGATIONS TO BE PAID BY SELLER. The Seller agrees to continue to pay from payments received hereunder the following obligation, which obligation must be paid in full when Buyer pays the purchase price in full:

That certain _____ dated _____, recorded as AF# _____.

ANY ADDITIONAL OBLIGATIONS TO BE PAID BY SELLER ARE INCLUDED IN ADDENDUM.

(b) EQUITY OF SELLER PAID IN FULL. If the balance owed the Seller on the purchase price herein becomes equal to the balance owed on prior encumbrances being paid by Seller, Buyer will be deemed to have assumed said encumbrances as of that date. Buyer shall thereafter make payments directly to the holders of said encumbrances and make no further payments to Seller. Seller shall at that time deliver to Buyer a fulfillment deed in accordance with the provisions of Paragraph 8.

(c) FAILURE OF SELLER TO MAKE PAYMENTS ON PRIOR ENCUMBRANCES. If Seller fails to make any payments on any prior encumbrance, Buyer may give written notice to Seller that unless Seller makes the delinquent payments within 15 days, Buyer will make payments together with any late charges, additional interest, penalties, and costs assessed by the holder of the encumbrance. The 15-day period may be shortened to avoid the exercise of any remedy by the holder of the prior encumbrance. Buyer may deduct the amounts so paid plus a late charge of 5% of the amount so paid and any attorneys' fees and costs incurred by Buyer in connection with the delinquency from payments next becoming due Seller on the purchase price. In the event Buyer makes such delinquent payments on three occasions, Buyer shall have the right to make all payments due thereafter direct to the holder of such prior encumbrance and deduct the then balance owing on such prior encumbrance from the then balance owing on the purchase price and reduce periodic payments on the balance due Seller by the payments called for in such prior encumbrance as such payments become due.

7. OTHER ENCUMBRANCES AGAINST THE PROPERTY. The property is subject to encumbrances including the following listed tenancies, easements, restrictions and reservations in addition to the obligations assumed by Buyer and the obligations being paid by Seller:

SUBJECT TO covenants, conditions, restrictions, reservations, easements and agreements of record, if any.

8. FULFILLMENT DEED. Upon payment of all amounts due seller, seller agrees to deliver to Buyer a Statutory Warranty Deed in fulfillment of this Contract. The covenants of warranty in said deed shall not apply to any encumbrances assumed by Buyer or to defects in title arising subsequent to the date of this Contract by, through or under persons other than the Seller herein. Any personal property included in the sale shall be included in the fulfillment deed.

9. LATE CHARGES. If any payment on the purchase price is not made within ten (10) days after the date it is due, Buyer agrees to pay a late charge equal to 5% of the amount of such payment. Such late payment charge shall be in addition to all other remedies available to Seller and the first amounts received from Buyer after such late charges are due shall be applied to the late charges.

10. NO ADVERSE EFFECT ON PRIOR ENCUMBRANCES. Seller warrants that entry into this Contract will not cause in any prior encumbrance (a) a breach, (b) accelerated payments, or (c) an increased interest rate; unless (a), (b) or (c) has been consented to by Buyer in writing.

11. POSSESSION. Buyer is entitled to possession of the property from and after the date of this Contract, or date of recording, whichever is later, subject to any tenancies described in Paragraph 7.

EXHIBIT "A"

12. TAXES, ASSESSMENTS AND UTILITY LIENS. Buyer agrees to pay by the date due all taxes and assessments becoming a lien against the property after the date of this Contract. Buyer may in good faith contest any such taxes or assessments so long as no forfeiture or sale of the property is threatened as the result of such contest. Buyer agrees to pay when due any utility charges which may become liens superior to Seller's interest under this Contract. If real estate taxes and penalties are assessed against the property subsequent to date of this Contract because of a change in use prior to the date of this Contract for Open Space, Farm, Agricultural or Timber classifications approved by the County or because of a Senior Citizen's Declaration to Defer Property Taxes filed prior to the date of this Contract, Buyer may demand in writing payment of such taxes and penalties within 30 days. If payment is not made, Buyer may pay and deduct the amount thereof plus 5% penalty from the payments next becoming due Seller under the Contract.

13. INSURANCE. Buyer agrees to keep all buildings now or hereafter erected on the property described herein continuously insured under fire and extended coverage policies in an amount not less than the balances owed on obligations assumed by Buyer plus the balance due Seller, or full insurable value, whichever is lower. All policies shall be held by the Seller and be in such companies as the Seller may approve and have loss payable first to any holders of underlying encumbrances, then to Seller as their interests may appear and then to Buyer. Buyer may within 30 days after loss negotiate a contract to substantially restore the premises to their condition before the loss. If the insurance proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless the underlying encumbrances provide otherwise. Otherwise the amount collected under any insurance policy shall be applied upon any amounts due hereunder in such order as the Seller shall determine. In the event of forfeiture, all rights of Buyer in insurance policies then in force shall pass to Seller.

14. NONPAYMENT OF TAXES, INSURANCE AND UTILITIES CONSTITUTING LIENS. If Buyer fails to pay taxes or assessments, insurance premiums or utility charges constituting liens prior to Seller's interest under this Contract, Seller may pay such items and Buyer shall forthwith pay Seller the amount thereof plus a late charge of 5% of the amount thereof plus any costs and attorney's fees incurred in connection with making such payment. It is further agreed that buyer will pay real estate taxes and hazard insurance as they come due, and that buyer will provide seller with evidence of those payments.

15. CONDITION OF PROPERTY. Buyer accepts the property in its present condition and acknowledges that Seller, his agents and subagents have made no representation or warranty concerning the physical condition of the property or the uses to which it may be put other than as set forth herein. Buyer agrees to maintain the property in such condition as complies with all applicable laws.

16. RISK OF LOSS. Buyer shall bear the risk of loss for destruction or condemnation of the property. Any loss shall not relieve Buyer from any of Buyer's obligations pursuant to this Contract.

17. WASTE. Buyer shall keep the property in good repair and shall not commit or suffer waste or willful damage to or destruction of the property. Buyer shall not remove commercial timber without the written consent of Seller.

18. AGRICULTURAL USE. If this property is to be used principally for agricultural purposes, Buyer agrees to conduct farm and livestock operations in accordance with good husbandry operations. In the event a forfeiture action is instituted, Buyer consents to Seller's entry on the premises to take any reasonable action to conserve soil, crops, trees and livestock.

19. CONDEMNATION. Seller and Buyer may each appear as owners of an interest in the property in any action concerning condemnation of any part of the property. Buyer may within 30 days after condemnation and removal of improvements, negotiate a contract to substantially restore the premises to their condition before removal. If the condemnation proceeds are sufficient to pay the contract price for restoration or if the Buyer deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the property shall be restored unless underlying encumbrances provide otherwise. Otherwise, proceeds of the award shall be applied in payment of the balance due on the purchase price, as Seller may direct.

20. DEFAULT. If the Buyer fails to observe or perform any term, covenant or condition of this Contract, Seller may:

- (a) Suit of Installments. Sue for any delinquent periodic payment; or
- (b) Specific Performance. Sue for specific performance of any Buyer's obligations pursuant to this Contract; or
- (c) Forfeit Buyer's Interest. Forfeit this Contract pursuant to Ch.61.30, RCW, as it is presently enacted and may hereafter be amended. The effect of such forfeiture includes: (i) all right, title and interest in the property of the Buyer and all persons claiming through the Buyer shall be terminated; (ii) the Buyer's rights are the Contract shall be canceled; (iii) all sums previously paid under the Contract shall belong to and be retained by the Seller or other person to whom paid and entitled thereto; (iv) all improvements made to and unharvested crops on the property shall belong to the Seller; and (v) Buyer shall be required to surrender possession of the property, improvements, and unharvested crops to the Seller 10 days after the forfeiture.

(d) Acceleration of Balance Due. Give Buyer written notice demanding payment of said delinquencies and payment of a late charge of 5% of the amount of such delinquent payments and payment of Seller's reasonable attorneys' fees and costs incurred for services in preparing and sending such Notice and stating that if payment pursuant to said Notice is not received within thirty (30) days after the date said Notice is either deposited in the

mail addressed to the Buyer or personally delivered to the Buyer, the entire balance owing, including interest, will become immediately due and payable. Seller may thereupon institute suit for payment of such balance, interest, late charge and reasonable attorneys' fees and costs.

(e) Judicial Foreclosure. Sue to foreclose this contract as a mortgage, in which event Buyer may be liable for a deficiency.

21. RECEIVER. If Seller has instituted any proceedings specified in Paragraph 20 and Buyer is receiving rental or other income from the property. Buyer agrees that the appointment of a receiver for the property is necessary to protect Seller's interest.

22. BUYER'S REMEDY FOR SELLER'S DEFAULT. If Seller fails to observe or perform any term, covenant or condition of this Contract, Buyer may, after 30 days' written notice to Seller, institute suit for damages or specific performance unless the breaches designated in said notice are cured.

23. NON-WAIVER. Failure of either party to insist upon strict performance of the other party's obligations hereunder shall not be construed as a waiver of strict performance thereafter of all of the other party's obligations hereunder and shall not prejudice any remedies as provided herein.

24. ATTORNEYS' FEES AND COSTS. In the event of any breach of this Contract, the party responsible for the breach agrees to pay reasonable attorneys' fees and costs, including costs of service of notices and title searches, incurred by the other party. The prevailing party in any suit instituted arising out of this Contract and in any forfeiture proceedings arising out of this Contract shall be entitled to receive reasonable attorneys' fees and costs incurred in such suit or proceedings.

25. NOTICES. Notices shall be either personally served or shall be sent certified mail, return receipt requested and by regular first class mail to Buyer at 13003 RAINIER ACRES ROAD, RAINIER, OR. 98576, and to Seller at 12218 1ST AVENUE S., SEATTLE, WA. 98168, or such other addresses as either party may specify in writing to the other party. Notices shall be deemed given when served or mailed. Notice to Seller shall also be sent to any institution receiving payments on the Contract.

26. TIME FOR PERFORMANCE. Time is of the essence in performance of any obligations pursuant to this Contract.

27. SUCCESSORS AND ASSIGNS. Subject to any restrictions against assignment, the provisions of this Contract shall be binding on the heirs, successors and assigns of the Seller and the Buyer.

28. OPTIONAL PROVISION - SUBSTITUTION AND SECURITY ON PERSONAL PROPERTY. Buyer may substitute for any personal property specified in Paragraph 3 herein other personal property of like nature which Buyer owns free and clear of any encumbrances. Buyer hereby grants Seller a security interest in all personal property specified in Paragraph 3 and future substitutions for such property and agrees to execute a financing statement under the Uniform Commercial Code reflecting such security interest.

SELLER

INITIALS:

BUYER

29. OPTIONAL PROVISION - ALTERATIONS. Buyer shall not make any substantial alteration to the improvements on the property without the prior written consent of Seller, which consent will not be unreasonably withheld.

SELLER

INITIALS:

BUYER

30. OPTIONAL PROVISION - DUE ON SALE. If Buyer, without written consent of Seller, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a foreclosure or trustee or sheriff's sale of any of the Buyer's interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable. If one or more of the entities comprising the Buyer is a corporation, any transfer or successive transfers in the nature of items (a) through (g) above of 49% or more of the outstanding capital stock shall enable Seller to take the above action. A lease of less than 3 years (including options for renewals), a transfer to a spouse or child of Buyer, a transfer incident to a marriage dissolution or condemnation, and a transfer by inheritance will not enable Seller to take any action pursuant to this Paragraph; provided the transferee other than a condemnor agrees in writing that the provisions of this paragraph apply to any subsequent transaction involving the property entered into by the transferee.

SELLER

INITIALS:

BUYER

EXHIBIT A

31. OPTIONAL PROVISION - PRE-PAYMENT PENALTIES ON PRIOR ENCUMBRANCES. If Buyer elects to make payments in excess of the minimum required payments on the purchase price herein, and Seller, because of such prepayments, incurs prepayment penalties on prior encumbrances, Buyer agrees to forthwith pay Seller the amount of such penalties in addition to payments on the purchase price.

SELLER

INITIALS:

BUYER

32. OPTIONAL PROVISION - PERIODIC PAYMENTS ON TAXES AND INSURANCE. In addition to the periodic payments on the purchase price, Buyer agrees to pay Seller such portion of the real estate taxes and assessments and fire insurance premium as will approximately total the amount due during the current year based on Seller's reasonable estimate.

The payments during the current year shall be \$ _____ per _____. Such "reserve" payments from Buyer shall not accrue interest. Seller shall pay when due all real estate taxes and insurance premiums, if any, and debit the amounts so paid to the reserve account. Buyer and Seller shall adjust the reserve account in April of each year to reflect excess or deficit balances and changed costs. Buyer agrees to bring the reserve account balance to a minimum of \$10 at the time of adjustment.

SELLER

INITIALS:

BUYER

33. ADDENDA. Any addenda attached hereto are a part of this Contract.

34. ENTIRE AGREEMENT. This Contract constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, written or oral. This Contract may be amended only in writing executed by Seller and Buyer.

IN WITNESS WHEREOF the parties have signed and sealed this Contract the day and year first above written.

SELLER
GABRIEL GORO

BUYER
JOHN H. BICHLER
MARIANNE M. SOUTHWORTH

STATE OF WASHINGTON
COUNTY OF King } ss

I certify that I know or have satisfactory evidence that GABRIEL GORO is the person who appeared before me, and said person acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

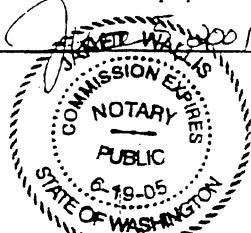
Dated: May 29, 2001

Raylene H. Gersabe
Notary Public in and for the State of Washington
Residing at 14413 Ambaum Blvd SW
My appointment expires: 8-9-2007

STATE OF WASHINGTON
COUNTY OF COWLITZ } ss

I certify that I know or have satisfactory evidence that JOHN H. BICHLER and MARIANNE M. SOUTHWORTH is the person who appeared before me, and said person acknowledged it to be their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: June 19, 2001



Janet Wallis
Notary Public in and for the State of Washington
Residing at Castle Rock
My appointment expires: June 19, 2001